

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ERNEST G. COOK,)	CASE NO. 4:22-CV-00077-BYP
)	
Plaintiff,)	JUDGE BENITA Y. PEARSON
)	United States District Judge
v.)	
)	MAGISTRATE JUDGE
BOARD OF TRUMBULL COUNTY COMMISSIONERS, NIKI FRENCHKO, COMMISSIONER; MAURO CANTALAMESSA, COMMISSIONER; AND FRANK FUDA, COMMISSIONER;)	CARMEN E. HENDERSON
)	
)	ORDER SETTING MEDIATION CONFERENCE
Defendants,		

A mediation conference will be held in the above-entitled case on Wednesday, August 2, 2023 at 11:00 AM before the Honorable Carmen E. Henderson, United States Magistrate Judge. This hearing will be conducted via Zoom. The court will provide Plaintiff and Defense counsel with instructions via email for connecting to the video conference. Counsel shall provide these instructions to their parties/party representatives so that all required participants are connected to the conference.

A. MEDIATION CONFERENCE PREPARATION

The success or failure of a mediation conference is dependent on the commitment made by the parties and their counsel to participate candidly and in good faith. Mediation preparation should be treated as seriously as trial preparation. The Court expects the parties to address each other with courtesy and respect.

The parties and their counsel shall adhere to the following when preparing for and participating in the mediation conference:

1. ATTENDANCE OF PARTIES REQUIRED. Parties with ultimate settlement authority must be personally present. The conference shall be attended by an authorized representative of each party together with counsel of record for each party, unless otherwise ordered by the Court. Authorized representative means either the named individuals or, in the case of a corporation or similar legal entity, the person who is most familiar with the facts of the case. Although in-house counsel may be present, in-house counsel may not serve as the sole authorized party representative. When the settlement decision will be made in whole or part by an insurer, the insurer shall send a representative in person with full and complete authority to make settlement decisions. A corporate party shall send a representative with full and complete authority to bind the company. A governmental entity shall send a representative authorized to act on its behalf. Failure to produce the appropriate person(s) at the conference may result in an award of costs and attorney fees incurred by the other parties in connection with the conference and/or other sanctions against the noncomplying party and/or counsel.

No later than five (5) business days before the mediation, counsel are to email Magistrate Judge Henderson's Chambers at Henderson_Chambers@ohnd.uscourts.gov, cc-ing opposing counsel, identifying the name of their party representatives and their title.

No individuals other than those listed above will be permitted to participate in the mediation without prior consent of the Court.

2. MEDIATION STATEMENT. At least five (5) business days prior to the mediation conference, each party shall submit a confidential statement to the Magistrate Judge. The mediation statement shall not become a part of the file of the case but shall be for the use of the Magistrate Judge in preparing for and conducting the mediation conference.

The mediation statement shall contain:

- a. A summary of relevant facts;

- b. Citations to and a brief summary of any legal authority that is dispositive of either of the parties' claims or defenses;
- c. A candid assessment of the strengths and weaknesses of the submitting party's case;
- d. A discussion of whether there are any impediments to settlement;
- e. A statement as to whether the party and counsel have adequate information to discuss settlement, and if not, what steps can or does the party need to take to ensure that adequate information is available prior to the mediation conference;
- f. A report on settlement efforts to date;
- g. Any other information that the party or counsel deems relevant or important for the Court to be aware of prior to the mediation conference.

If not already a part of the court file, copies of critical agreements, business records, photographs or other documents or exhibits shall be attached to the settlement statement. The mediation statement should contain enough information to be useful to the Magistrate Judge in analyzing the factual and legal issues in the case but **shall be double spaced and no more than five (5) pages** in length. The parties are directed to be candid in their statements.

The mediation statement shall be emailed to U.S. Magistrate Judge Henderson's Chambers at Henderson_Chambers@ohnd.uscourts.gov. The parties shall NOT file their mediation statements with the Clerk or exchange their mediation statements with opposing counsel or parties. After receiving the Mediation Statements, the undersigned may schedule separate telephone conferences with counsel for each side prior to the Mediation.

3. PREMEDIATION CONFERENCE DEMAND AND OFFER. A mediation conference is more likely to be productive if, before the conference, the parties have had a written exchange of their settlement proposals. Accordingly, no later than at least ten (10) business days prior to the mediation conference, plaintiff's counsel shall submit a settlement

demand to defendant's counsel with a written description and monetary breakdown of the damages claimed, including attorneys' fees and expenses if applicable, and explanation of why such a settlement demand is appropriate. No later than seven (7) business days prior to the mediation conference, defendant's counsel shall submit a written offer to plaintiff's counsel with an explanation of why such a settlement offer is appropriate. On occasion, this process will lead directly to a settlement. If settlement is not achieved, plaintiff's counsel shall email copies of these letters to Magistrate Judge Henderson's chambers at Henderson_Chambers@ohnd.uscourts.gov no later than five (5) business days before the conference, with a copy to opposing counsel. DO NOT file copies of these letters with the Clerk's Office. If a settlement is reached by the parties prior to the mediation conference, the parties shall promptly notify the Court.

4. MEDIATION FORMAT. The Court will generally forgo opening presentations by the parties and will begin mediation with a joint discussion followed by private caucusing. If a party believes that an opening presentation will assist mediation, the party shall inform the Court in its mediation statement. In some cases, the Court may conduct some part of the mediation proceedings in the Courtroom. The Court expects both the lawyers and the party representatives to be fully prepared to participate. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to find creative means for resolving the dispute.

At the mediation conference, the parties and counsel should be prepared to discuss those matters contained in their respective mediation statements as well as the following matters:

- a. What are your objectives in the litigation?
- b. What are the strengths and weaknesses of your case?
- c. What issues (in and outside of this lawsuit) need to be resolved?
- d. Do you understand the opposing side's view of the case? What is wrong with

their perception? What is right with their perception?

e. What are the points of agreement and disagreement between the parties?

Factual? Legal?

f. What remedies are available through litigation or otherwise?

g. Are there possibilities for a creative resolution of the dispute?

5. STATEMENTS INADMISSIBLE. In accordance with Federal Rule of Evidence 408, statements made by any party during the mediation conference are not to be used in discovery and will not be admissible at trial. Parties are encouraged to be frank and open in their discussions.

B. INVOLVEMENT OF CLIENTS

For many clients, this will be the first time they have participated in a court supervised mediation conference. Therefore, counsel shall provide a copy of this Order to the client and shall discuss the points contained herein with the client prior to the mediation conference.

IT IS SO ORDERED.

Dated: July 26, 2023

s/ Carmen E. Henderson

CARMEN E. HENDERSON
U.S. MAGISTRATE JUDGE